

FCC MAIL ROOM

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Amendment of Section 73.202(b),)
FM Table of Allotments,)
FM Broadcast Stations.)
(Corinth, Scotia and Hudson Falls, New York))
)

MM Docket No. 01-94
RM-10086

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REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 27, 2001

Released: July 6, 2001

By the Chief, Allocations Branch:

1. The Allocations Branch has before it a *Notice of Proposed Rulemaking* issued at the request of Vox New York, LLC ("petitioner"), licensee of Stations WHTR(FM), Corinth, New York, and WFFG-FM, Hudson Falls, New York, proposing the substitution of Channel 229A for Channel 228A at Corinth, New York, the reallocation of Channel 229A from Corinth to Scotia, New York, and the modification of the license of Station WHTR(FM), accordingly. It also proposes to reallocate Channel 296A from Hudson Falls, New York, to Corinth, and to modify the license for Station WFFG-FM, accordingly. Petitioner filed comments in response to the *Notice* reiterating its intention to apply for the modification of its licenses as it proposed. We received no other comments or counterproposals.

2. Petitioner filed its petition pursuant to the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.¹ It states that each of its proposals falls within the provisions of this rule because the proposal to allocate Channel 229A at Scotia is mutually exclusive with Station WHTR's existing authorization for Channel 228A at Corinth, and its proposal to reallocate Channel 296A from Hudson Falls to Corinth is mutually exclusive with Station WFFG-FM's current allotment of Channel 296A at Hudson Falls. It also notes that the allotment of Channel 229A at Scotia will provide the community with a first local transmission service and retains a first local service at Corinth, it falls within priority (3) of the FM allotment priorities and will serve the public interest.²

3. In support of the proposals, petitioner states that Scotia is a community for allotment purposes. It states that the village of Scotia, with a U.S. Census population of 7,359 persons, is a community and is independent of the larger Albany/ Troy/ Schenectady Urbanized Area of which it is a part. It states that the proposal will provide a city-grade signal to less than 25% of the Urbanized Area.

¹ See *Report and Order* in MM Docket No. 88-526 ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O").

² The FM allotment priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [co-equal weight given to priorities (2) and (3).] See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

4. We find that Scotia is a community independent of the Albany/ Troy/ Schenectady Urbanized Area, based on petitioner's showing using the factors delineated in *Faye and Richard Tuck, Inc.*³ Petitioner shows that there are significant employment opportunities within the community and that 16% of the community's residents work there. The town has a newspaper, which provides local businesses an outlet for advertising independent of the urbanized area. Petitioner claims that the local residents and leaders consider Scotia to be a distinct community and that there are local cultural events and attractions. The community has an elected mayor and village board and the community has almost 50 employees. The community has a zip code, post office and there is a shared Glenville/Scotia telephone book, which is separate from the urbanized area. The community also has a number of local businesses and health facilities. Finally, the community has its own public works, parks and recreation and water and sewage services, and provides power and natural gas through Niagara Mohawk. In addition, it has its own police department and fire department, and provides its own public schools.

5. We will grant the two changes of community. We believe that the two reallocations together will serve the public interest. We note that we would be reluctant to allow the reallocation of Channel 229A from Corinth to Scotia, standing alone, because it would result in the removal of the sole local transmission service from Corinth.⁴ However, considering the two proposals together, we believe that they will result in a preferential arrangement of allotments because Scotia will gain its first local transmission service and Corinth retains its sole local transmission service.

6. We note that our action in approving the reallocation and change of community of license of Station WHTR(FM), from Corinth to Scotia, New York, is premised upon the activation of Channel 296A at Corinth to prevent the removal of the sole local service in Corinth. Accordingly, consistent with precedent, we will condition the grant of an authorization to operate on Channel 229A at Scotia upon the activation of Channel 296A at Corinth and the grant of program test authority.

7. Channel 229A can be reallocated from Corinth to Scotia at petitioner's requested site 11.7 km (7.3 mi) northwest of the community.⁵ Channel 296A can be reallocated from Hudson Falls to Corinth at petitioner's licensed site 5 kilometers (3.1 miles) east of the community.⁶ With respect to Channel 296A, petitioner states that there is no change of transmitter site and therefore no gain or loss in area or population. Our analysis also shows that while Corinth is not in the Glen Falls Urbanized Area, the proposal will continue to provide a city-grade signal to 100% of that Urbanized Area. We note that because the reallocation involves no site change and Station WFFG-FM will be providing the same amount of coverage to the Glen Falls Urbanized Area,⁷ the Commission does not require an analysis of the communities pursuant to the policies enumerated in *Faye and Richard Tuck* because the proposal does not constitute a migration to an urbanized

³ 3 FCC Rcd 5374, 5378 (1988).

⁴ See *Report and Order in MM Docket 89-87*(Bessemer and Tuscaloosa, Alabama), 5 FCC Rcd 669; *app. for rev. granted* 11 FCC Rcd 11585 (1996).

⁵ The coordinates for Channel 229A at Scotia are 42-54-56 NL, and 74-02-28 WL. The *Notice* proposed a different site for this channel, but petitioner requested a specific site for the change of community for this as an existing station, and reiterated this request in its comments and we will honor this request.

⁶ The coordinates for Channel 296A at Corinth are 43-14-40 NL and 73-46-18 WL.

⁷ See *Moncks Corner, Kiawah Island and Sampit, South Carolina*, 15 FCC Rcd 8973, 9892 (2000), and *East Los Angeles, Long Beach and Frazier Park, California*, 10 FCC Rcd 2864, 2868 (1995).

area warranting application of this policy.

8. We note that since Scotia is within 320 kilometers (200 miles) of the U.S.-Canadian border, we have requested concurrence of the Canadian government for the allotment at that community. Concurrence has not yet been received for this allotment. Accordingly, any construction permit that is granted prior to the receipt of formal concurrence of the Canadian Government will include the following condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without right to hearing if specifically objected to by Industry Canada. This condition will be removed once formal approval for the allotment is received from Industry Canada."

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective August 20, 2001, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>
Scotia, NY	229A
Corinth, NY	296A
Hudson Falls, NY	269A

10. IT IS ORDERED That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this *Order* to the following:

Jonathan E. Allen
Rini, Coran, and Lancellotta, P.C.
1350 Connecticut Avenue, N.W.
Suite 900
Washington, DC 20036-0551
(Counsel to petitioner)

11. IT IS FURTHER ORDERED That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WHTR(FM) IS MODIFIED to specify operation on Channel 229A at Scotia, New York, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 only if Channel 296A is activated at Corinth; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

12. IT IS FURTHER ORDERED That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of Station WFFG-FM IS MODIFIED to specify operation on Channel 296A at Corinth, New York, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (d) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules

13. Pursuant to Commission Rule Section 1.1104(1)(k) and 2(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of existing FM allotment, if the request is granted, must submit a rulemaking fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Vox New York, LLC, licensee of Stations WHTR(FM) and WFFG-FM, is required to submit a rulemaking fee in addition to the fee required for the application to effectuate the changes of community from Corinth to Scotia and from Hudson Falls to Corinth, respectively.

14. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

15. For further information concerning this proceeding, contact Victoria M. McCauley, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau